IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R.No. 15 of 1993
Date of decision: 19.10.2006

The Commissioner of Income-tax, Patiala

..Applicant
through
Mr.S.K.Garg Narwana, Advocate

v.

M/s Rajendera Trading Co., Ludhiana

..**Respondent**
through
Mr. Vishal Gupta, Advocate

CORAM:

Hon'ble Mr.Justice K.S.Garewal
Hon'ble Mr.Justice Rajesh Bindal

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, J.

At the instance of the Revenue, the Income-Tax Appellate Tribunal, Chandigarh Bench (for short, `the Tribunal') has referred, under Section 256(1) of the Income-tax Act, 1961 (for short, `the Act'), the following question of law for opinion of this Court, arising out of ITA No. 807/Chandi/91, for the assessment year 1989-90:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law and on facts in deleting the penalty of Rs. 60,000/- levied u/s 271D, after having upheld the view that the loan/deposits taken/accepted by the assessee, was in contravention of the provisions of Section 269SS?"

Briefly, the facts, as noticed in the statement of the case, are that the assessee, which is a registered firm, raised loans/deposits of Rs. 60,000/- in cash from M/s Kulwant Rai & Sons. The depositor is HUF. The karta of HUF, namely, Madan Lal is a partner in the assessee-firm. The Assessing Officer, treating this to be a violation of Section 269SS of the Act, imposed penalty under Section 271-D

of the Act, vide order dated 28.9.1990. In appeal before the Commissioner of Income-tax (Appeals) [for short, `the CIT (A)'], the assessee succeeded, where the CIT(A) observed as under:

> "Even on merits the penalty cannot be sustained as the requirement u/s 269SS is that no person shall take or accept from any other person..... In this case admittedly the deposit is by the karta of an HUF. The Karta is a partner in the firm and where the deposit has been made out of his own fund or out of the funds of bigger or smaller HUF vis the firm, the deposit has been received from the partner who is not any other person as far as the firm is concerned. For that reason no provisions of Section 269SS was violated. For that reason also the penalty cannot be sustained. The penalty of Rs. 60000/- is deleted."

In further appeal by the Revenue before the Tribunal, the order passed by the CIT(A) was affirmed with the acceptance of the explanation furnished by the assessee. The Tribunal also relied upon the fact that the provisions of Section 269SS and corresponding penalty under Section 271D of the Act having been introduced only with effect from the assessment year 1989-90, the bonafides of the assessee cannot be doubted, especially when the genuineness of the transaction is not in dispute. Accordingly, in the facts and circumstances of the case, while holding that the Tribunal was right in law in deleting the penalty levied on the assessee under Section 271-D of the Act, we answer the question against the Revenue and in favour of the assessee.

The reference is disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

(K.S. Garewal)
Judge

19.10.2006
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